

No. 20172

MEXICO
and
UNITED STATES OF AMERICA

Agreement of co-operation regarding pollution of the marine environment by discharge of hydrocarbons and other hazardous substances (with annexes). Signed at Mexico City on 24 July 1980

Exchange of notes constituting an agreement modifying annex VI to the above-mentioned Agreement. Mexico City, 17 October and 18 November 1980

Authentic texts: Spanish and English.

Registered by Mexico on 22 July 1981.

MEXIQUE
et
ÉTATS-UNIS D'AMÉRIQUE

Accord de coopération relatif à la pollution du milieu marin par la décharge d'hydrocarbures et autres substances nuisibles (avec annexes). Signé à Mexico le 24 juillet 1980

Échange de notes constituant un accord modifiant l'annexe VI de l'Accord susmentionné. Mexico, 17 octobre et 18 novembre 1980

Textes authentiques : espagnol et anglais.

Enregistrés par le Mexique le 22 juillet 1981.

AGREEMENT¹ OF COOPERATION BETWEEN THE UNITED MEXICAN STATES AND THE UNITED STATES OF AMERICA REGARDING POLLUTION OF THE MARINE ENVIRONMENT BY DISCHARGE OF HYDROCARBONS AND OTHER HAZARDOUS SUBSTANCES

The Government of the United Mexican States and the Government of the United States of America,

Aware of the importance of preserving the marine environment and conserving the living organisms which inhabit it,

Recognizing that the pollution of the marine environment by hydrocarbons or other hazardous substances causes or may cause damage to the ecological conditions of the sea by affecting the natural resources therein and may constitute a threat to the public health and welfare,

Have agreed to the following:

Article I. The Parties agree to establish a Mexico-United States joint contingency plan regarding pollution of the marine environment by discharges of hydrocarbons and other hazardous substances (hereafter, "the Plan"), with the object of developing measures to deal with such polluting incidents and ensuring an adequate response in each case that may affect in a significant manner the areas set forth in Article VII.

Article II. For the purpose of this Agreement:

(a) A polluting incident means a discharge or the threat of an imminent discharge of hydrocarbons or of any hazardous substance in the sea, of a magnitude or significance that requires an immediate response in order to contain, recover or destroy the substance for the purpose of eliminating the threat or of minimizing its effects on the marine flora and fauna and on the public health and welfare.

(b) Hydrocarbons means petroleum in all its forms, including crude oil, fuel oil, sludge, oil wastes, and refined products.

(c) Hazardous substances means elements and compounds which when discharged into the marine environment present an imminent and substantial danger to the public health or welfare, or which may affect natural resources, including, among others, fish, shellfish, wildlife, shorelines and beaches.

Article III. The Parties, consistent with their means, commit themselves to the development of nationally operative systems, applicable within their respective areas, as set forth in Article VII, that permit detection of the existence or the imminent possibility of the occurrence of polluting incidents, as well as providing adequate means within their power to eliminate the threat posed by such incidents and to minimize the adverse effects to the marine environment and the public health and welfare.

¹ Came into force provisionally on 24 July 1980 by signature, and definitively on 30 March 1981 by an exchange of notes by which the Parties notified each other of the completion of the necessary internal procedures, in accordance with article XI (1).

Article IV. The Parties will cooperate, in accordance with this Agreement, including its Annexes, to avoid and combat the adverse effects on the marine environment of polluting incidents, the Parties undertake to exchange up-to-date information and consult to guarantee adequate cooperation between the competent authorities of each Party, with regard to matters falling within the scope of this Agreement, including its Annexes.

Article V. The coordination of the Plan, with respect to the United Mexican States, is the primary responsibility of the Secretariat of the Navy and of another agency or agencies of the Mexican Government, depending upon the nature of the polluting incident; with respect to the United States of America, the United States Coast Guard and the United States National Response Team. The agencies of both Governments that will, when concerned, assist the coordinating authorities in their duties are enumerated in an Annex to this Agreement.

Article VI. In the case of the occurrence of a polluting incident, only the coordinating authorities of the Party in whose area, as set forth in Article VII, the incident or its effects occurred will have executive power under the Plan within its area. The coordinating authorities will recommend to their respective Government the measures necessary to control the polluting incident.

Article VII. This Agreement and its Annexes shall be applicable in accordance with its terms to polluting incidents which may affect the marine environment of one or both Parties. For purposes of this Agreement, the marine environment of a Party is the area of the sea, including the adjoining shoreline, on its side of the maritime boundaries established with the other Party and other States and with 200 nautical miles of the baselines from which the breadth of its territorial sea is measured.

Article VIII. The joint response envisaged by this Agreement can only be applied when the Parties agree. The Parties will determine in the same manner the magnitude of the response action required by each polluting incident.

Article IX. None of the provisions of the present Agreement shall be interpreted as affecting the rights and obligations of the Parties under the treaties to which they are party and their respective positions with regard to the Law of the Sea.

Article X. By agreement of the Parties, technical Annexes that they consider necessary will be added to this Agreement and shall form an integral part thereof. Those Annexes, including those existing on the date of signature of this Agreement, will have as their purpose the development of cooperative mechanisms envisaged in this Agreement.

Article XI. (1) The present agreement will be applied provisionally from the date of signature. This Agreement shall enter into force upon exchange of notes informing each Party that the other Party has completed its necessary internal procedures. Amendments to this Agreement shall enter into force in the same manner.

(2) Amendments to the Annexes and adoption of new Annexes shall be effected by exchange of notes.

(3) This Agreement shall remain in force for five years and shall continue in force thereafter until one Party notifies the other, in writing, six months in advance, of its intention to terminate the Agreement.

DONE in Mexico City on the 24th of July 1980, in duplicate, in the English and Spanish languages, both texts being equally authentic.

For the United Mexican States:

[Signed]

JORGE CASTAÑEDA

For the United States of America:

[Signed]

JULIAN NAVA

ANNEX I

1. *On-Scene Coordinator*

1.1. As soon as the Agreement enters into force the Parties will designate, without waiting for an incident to occur, federal officials responsible for exercising in their respective areas the authority to which Article VI of the Agreement refers. Said officials will have the title of "On-Scene Coordinator" (OSC). The Parties will also designate officials who will have advisory and liaison functions between the Parties, in the areas of the other Party; said officials will have the title of "On-Scene Advisory and Liaison Coordinator" (ALC).

1.2. The functions and responsibilities of the "On-Scene Coordinator" will be:

- (a) To coordinate and direct matters related to the detection and response operations to the incident;
- (b) To authorize the use of dispersants and other chemical products in accordance with respective national policy, provided that such use:
 - (i) Prevents or substantially reduces the risk to human life and health or the risk of fire;
 - (ii) Prevents or reduces a threat for an important segment of the population of a vulnerable species of aquatic birds; or
 - (iii) Appears to be the most efficient method to reduce the overall adverse effects of a spill;
- (c) To determine the facts including: the nature, quantity and location of the pollutant, the direction and probable time of travel of same, the available resources and those required; and to obtain the necessary information to determine potential impacts on human health and welfare, and on natural resources including fish and wildlife and their habitats, and the areas which could be adversely affected;
- (d) To determine priorities and to decide when to initiate the phases described in Annex IV;
- (e) To permanently and in a detailed way inform the Joint Response Team (JRT) (see Annex II) about all aspects of the incident and of the response operation;
- (f) To recommend to the Chairman of the JRT of his country that he formally propose to the Chairman of the JRT of the other Party the initiation of the joint responses envisaged in Article VIII, for a specific pollution incident;
- (g) To decide on the termination of response action;
- (h) To prepare with the advice of the ALC a final report and recommendations for future incidents, in view of the experience obtained. Said report and recommendations shall be submitted to the JRT;
- (i) To coordinate, in consultation with the JRT, the official information to the information media.

1.3. If the response action is required in areas of the two Parties, the OSC's of both Parties will coordinate the measures to be adopted through the collaboration of both ALC's.

1.4. The OSC will notify by the most rapid means the two Chairmen of the JRT about every polluting incident which has occurred, or which is in imminent danger of occurring, which could have adverse effects in the marine environment of both Parties, or which is of such magnitude as in the judgment of the OSC would require the initiation of the joint response envisaged in Article VIII to the Agreement. This notification does not constitute a formal proposal for the initiation of the joint response. The authorities so notified will immediately acknowledge receipt and meet for the purpose of consultation.

1.5. The OSC will keep a journal of the events which occur during the application of the Plan to an incident; said journal will be placed at the disposal of the JRT.

1.6. The Parties will unilaterally divide their respective areas for purposes of the designation of an OSC and of a Joint Response Center (see Annex III) for each of those divisions.

1.7. In accordance with respective national legislation, upon initiation of a joint response special customs and immigration clearances will be sought by each Party for response resources including personnel and equipment. Prior arrangements will be sought by each Party to ensure that the clearance process can be accomplished in a timely manner and that it can be initiated by a communication between the OSC's or between the ALC and the OSC as appropriate.

ANNEX II

2. *Joint Response Team (JRT)*

2.1. The Parties will designate, under the responsibility of the authorities mentioned in Article V of the Agreement, authorities and other persons who will constitute the JRT. That designation will be made as soon as the Agreement enters into force, without waiting for an incident to occur, and communicate to the other Party for the information of the authorities mentioned in Annex VI.

2.2. The Mexican authority mentioned in Article V of the Agreement will designate the Mexican Chairman of the JRT. The United States authorities mentioned in Article V of the Agreement will designate the U.S. Chairman of the JRT.

2.3. When the JRT meets in Mexico, the Mexican Chairman will preside. When the JRT meets in the United States of America, the U.S. Chairman will preside.

2.4. Upon being informed of a specific polluting incident the two Chairmen of the JRT shall consult and may decide to formally propose to their Governments the initiation of the joint response envisaged in Article VIII. Agreement to initiate the joint response shall be communicated through diplomatic channels.

2.5. As soon as the Mexican and U.S. sections of the JRT are designated, the Chairmen will communicate and decide the place and date for the first meeting of the JRT to develop procedures to anticipate matters relative to a coordinated response to the eventual polluting incidents by all the competent agencies and persons. The JRT will meet as many times as necessary, both in periodic planning meetings and in emergency meetings, as decided by the Chairman.

2.6. The functions and responsibilities of the JRT will be the following:

- (a) Based on the report of the OSC, advise him about the response needs and inform him about the available resources for each particular situation.
- (b) Evaluate the measures taken by the OSC and make recommendations in this regard, once the agreement for the initiation of the joint response to a specific polluting incident is perfected.

- (c) Consider the reports of the OSC and recommend improvements needed in the Plan through proposed amendments to existing Annexes or for new Annexes.
- (d) Based on the reports of the OSC, to identify the possible impacts of a specific polluting incident and therefore to recommend the necessary actions to assess the adverse effects of such incident.
- (e) Provide advice to the OSC. The JRT will have no control over the functions and responsibilities of the OSC.
- (f) Take measures to coordinate and use to the maximum the resources which agencies or persons of Mexico, of the United States of America, or of a third country can contribute.

2.7. In order for the JRT to make decisions, the agreement of both Chairmen is required.

ANNEX III

3. *Joint Response Centers*

3.1. As soon as the Agreement enters into force, and without waiting for an incident to occur, the Authorities mentioned in Article V will designate Joint Response Centers, preferably utilizing already existing installations, destined to serve as headquarters for the meetings of the JRT, unless the Chairman of the JRT decides to convoke the JRT in another place, in view of the circumstances.

ANNEX IV

4. *Operational Phases*

Phase I. Discovery, notification and alarm.

Phase II. Evaluation of the incident, consultations and agreement on joint response.

Phase III. Containment and measures against the spread of the pollutant.

Phase IV. Cleanup and recovery.

Phase I. Discovery, notification and alarm

A pollution incident may be discovered and notification made; as a result of the regular surveillance activities of the national anti-pollution forces, by the local and regional authorities; by the general public; or as a result of reporting by the persons who caused the incident.

If there is an indication of a threat to the marine environment of the other Party, a speedy notification shall be given to the other Party in accordance with the procedures established in the Annexes.

Phase II. Evaluation of the incident, consultations and agreement on joint response

Evaluation of the incident, consultation and agreement on joint response will be made in conformity with the Agreement and its Annexes.

The level of anti-pollution response required will be determined by the severity of the incident, the nature and quantity of the pollutant and the location of the specific polluting incident.

Phase III. Containment and measures against the spread of the pollutant

The containment is whatever physical or chemical measures are adopted to control or restrict the spread of a pollutant; the measures against the spread of the pollutant are those activities, different from containment, which are adopted to reduce the adverse impact of the pollutant.

Phase IV. Cleanup and recovery

The cleanup and recovery of pollutants are operations intended to reduce the effect of an incident to the minimum and include the elimination of the pollutant from the marine environment.

The pollutants which are recovered as a result of cleanup actions should be disposed of in conformity with the national procedures of the place where they are found.

ANNEX V

5. *Reports and Communication*

5.1. **System of Rapid Notification.** The existence of any polluting incident which is affecting or threatens the other Party will be communicated, without delay, to the appropriate OSC, and if deemed necessary to the Chairman of the JRT, of that Party. A prompt reaction is vital to achieve satisfactory results from an operation. Examples of various message formats are enumerated within this Annex. Each message should be identified with a Date-Time Group (DTG) in Greenwich Mean Time. The first two digits of the DTG represent the day of the month; the second two digits, hours; and the final two digits, minutes.

5.2. Even though some type of evaluation is necessary to make a decision with respect to whether or not to initiate a joint response, it is essential that a notification be given indicating that a joint response may be necessary. This notification by itself will not require a joint response. Nevertheless, it will permit the alerting of the Parties to the possibility of a joint response. The message of notification is specified in the following format:

FORMAT

DATE (DTG)

FROM (FM)

TO (TO)

INFORMATION (INFO)

MEXUS SPILL (OR POTENTIAL SPILL) (Identify the incident)

1. Geographic situation
2. Any other details
3. Request for acknowledgement of receipt

Note: The message normally will come from a predesignated On-Scene Coordinator (OSC). The addressees should acknowledge receipt as soon as possible.

5.3. **Initiation of a Joint Response.** A proposal for a joint response will only be made by a formal request. If both Chairmen of the JRT agree to propose to their Governments the initiation of a joint response the Mexican Chairman shall report the recommendation thus agreed to the Mexican Secretariat of Foreign Relations and the United States Chairman shall report the same recommendation to the United States Department of State. The message should be in the following format:

FORMAT

DATE (DTG)

FROM (FM)

TO (TO)

BOTH CHAIRMEN OF THE JRT PROPOSE INITIATION OF JOINT RESPONSE

OSC (Name of responsible person)

OSC CENTER ESTABLISHED AT (Location of Center) (Address and telephone numbers).

The message should also contain the information outlined in paragraph 5.2 of this Annex.

5.4. Situation Reports (SITREPS)

5.4.1. Up-to-date information on the situation of a polluting incident which has justified the joint response activity is essential for the efficient administration and the satisfactory outcome of an incident. This information should be sent by the On-Scene Coordinator in the format specified below. The situation reports (SITREPS) should be prepared with the frequency believed necessary with the objective of providing all interested authorities with a complete and up-to-date description of the problem and of informing them about what action has been taken, future plans, recommendations and requests for assistance.

5.4.2. The normal format of the message will be the following:

FORMAT

DATE (DTG)

FROM (FM)

TO (TO)

INFORMATION (INFO)

MEXUS SITREP (Number of SITREP)

POLLUTION INCIDENT (Identify the incident)

1. Situation
2. Action taken
3. Future plans
4. Recommendations
5. Status of case (Pends, closed or participation terminated)

5.4.3. *Situation:* The section on situation should provide complete details on the polluting incident including what happened, the type and quantity of pollutant involved, the participating agencies, the areas covered and/or threatened, the success of the control efforts, the prognosis and any other pertinent data.

5.4.4. *Action taken:* The action taken section should include a summary of all actions taken up to the present by the discharger, local forces, governmental and non-governmental agencies.

5.4.5. *Future plans:* The section on future plans should include all actions projected for the immediate future.

5.4.6. *Recommendations:* Any recommendations made by the On-Scene Coordinator (OSC) relative to the response shall be included in the recommendations section. This would include requests for assistance if necessary.

5.4.7. *Status of the case:* The section on status should indicate "Case closed", "Case pends", or "Participation terminated", according to which is pertinent.

5.5. Termination

5.5.1. A recommendation to terminate the joint response to a particular incident will be made after consultations between the On-Scene Coordinator (OSC) and the On-Scene Advisory and Liaison Coordinator (ALC) and will then be forwarded to the Joint Response Team JRT. Following consultations, the Chairmen of the JRT may by joint decision or unilaterally terminate the joint response and will so advise the OSC(s), the

ALC(s), the JRT, the Mexican Secretariat of Foreign Relations and the United States Department of State. The notification shall include date and time (in GMT) of the termination.

5.5.2. Normal Format for the Termination Message:

FORMAT

DATE (DTG)

FROM (FM)

TO (TO)

INFORMATION (INFO)

JOINT MEXUS CONTINGENCY PLAN TERMINATED AT (GMT)

5.6. Incident Reports. The reports of the OSC to the JRT, to which clauses (e) and (h) of paragraph 1.2 of Annex I refer will have the following format:

- (a) Description of the cause and initial situation;
- (b) Organization of response action and resources committed;
- (c) Effectiveness of response and removal actions by:
 - The discharger
 - State and local forces
 - Federal agencies and special teams
- (d) Unique problems encountered;
- (e) Recommendations on:
 - Means to prevent reoccurrence
 - Improvement of response actions
 - Changes to the joint plan

ANNEX VI

6. *Coordinating and auxiliary agencies to which Article V refers*

6.1. For the Government of the United Mexican States

Coordinating Authority:

Secretariat of the Navy

Auxiliary Agencies:

- (a) Secretariat of Government
- (b) Secretariat of Foreign Relations
- (c) Secretariat of Agriculture and Hydraulic Resources
- (d) Secretariat of Programming and Budget
- (e) Secretariat of Communications and Transport
- (f) Secretariat of Human Settlements and Public Works
- (g) Secretariat of Health and Assistance
- (h) Secretariat of Patrimony and Industrial Development
- (i) Department of Fisheries
- (j) Petróleos Mexicanos (PEMEX)

6.2. For the Government of the United States of America

Department of Transportation

United States Coast Guard (USCG)

Department of the Interior

Department of Commerce

Department of Defense

Environmental Protection Agency (EPA)

Department of Agriculture

Department of Health and Human Services

Department of Justice

Department of State

Department of Energy

Department of Labor

Federal Emergency Management Agency

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹
 BETWEEN THE UNITED MEXICAN STATES AND THE
 UNITED STATES OF AMERICA MODIFYING ANNEX VI TO
 THE AGREEMENT OF 24 JULY 1980 REGARDING POLLUTION
 OF THE MARINE ENVIRONMENT BY DISCHARGE OF
 HYDROCARBONS AND OTHER HAZARDOUS SUBSTANCES²

I

[SPANISH TEXT — TEXTE ESPAGNOL]

[TRANSLATION — TRADUCTION]

314672

La Secretaría de Relaciones Exteriores saluda atentamente a la Embajada de los Estados Unidos de América y tiene el honor de hacer referencia al Acuerdo de Cooperación entre el Gobierno de los Estados Unidos Mexicanos y el Gobierno de los Estados Unidos de América sobre Contaminación del Medio Marino por Derramas de Hidrocarburos y Otras Sustancias Nocivas.

Sobre el particular, la Secretaría se permite expresar a la Embajada el deseo del Gobierno de México de adicionar el Anexo VI del Acuerdo, mediante la inclusión de la Secretaría de Hacienda y Crédito Público en la lista de las Dependencias Auxiliares por parte de México, debido a que la participación de la misma sería conveniente para el cumplimiento eficaz de lo dispuesto en el Anexo I, inciso 1.7.

La Secretaría de Relaciones Exteriores aprovecha la oportunidad para reiterar a la Embajada de los Estados Unidos de América las seguridades de su más alta y distinguida consideración.

Tlatelolco, D.F., a 17 de octubre de 1980

A la Embajada de los
 Estados Unidos
 de América
 Ciudad

314672

The Secretariat of Foreign Relations presents its compliments to the Embassy of the United States of America and has the honour to refer to the Agreement on Co-operation between the Government of the United Mexican States and the Government of the United States of America regarding pollution of the marine environment by discharges of hydrocarbons and other hazardous substances.

The Secretariat wishes to inform the Embassy that the Government of Mexico would like to supplement Annex VI of the Agreement to provide for the inclusion of the Secretariat of the Treasury in the list of auxiliary agencies on the Mexican side since the participation of that Secretariat would facilitate the effective implementation of the provisions of Annex I, paragraph 1.7.

The Secretariat of Foreign Relations avails itself, etc.

Tlatelolco, D.F., 17 October 1980

Embassy of the United States
 of America
 Mexico City

¹ Came into force on 18 November 1980, the date of the note in reply, in accordance with the provisions of the said notes.

² See p. 235 of this volume.

II

No. 2169

The Embassy of the United States of America presents its compliments to the Secretariat of Foreign Relations and has the honor to refer to the Secretariat's Diplomatic Note No. 314672 and the request of the Secretariat stated therein to modify Annex VI of the "Agreement for Cooperation between the Government of the United Mexican States and the Government of the United States of America Regarding Pollution of the Marine Environment by Discharges of Hydrocarbons and Other Hazardous Substances" by including in the list of auxiliary agencies on the Mexican side the Secretariat of the Treasury of the Republic of Mexico.

The Embassy has the honor to acknowledge that the modification as stated above is acceptable to the Government of the United States of America and by the terms of this Note it constitutes an amendment to the Agreement between our two Governments effective the date of this Note.

The Embassy of the United States of America avails itself of this opportunity to renew to the Secretariat of Foreign Relations the assurances of its highest consideration.

The Embassy of the United States of America
Mexico, D.F., November 18, 1980